MD Biomedical Engineering (M) Sdn Bhd v Goh Yong Khai

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO Q-02(IM)(NCVC)-2524–12 OF 2018
LAU BEE LAN, RAVINTHRAN AND LEE HENG CHEONG JJCA
16 MARCH 2021

Civil Procedure — Damages — Assessment of damages — Wrongful entry of caveat — Whether legal fees and disbursements were recoverable — Reasonable forseeability test — Whether claim for legal fees too remote

Statutory Interpretation — Construction of statutes — Sarawak Land Code s 179 — 'Such compensation as may be just' — Whether confined to real, actual and possibly direct damage — Whether claim for legal fees too remote and s 179 wide enough to cover legal fees and disbursement

This was an appeal against the decision of the High Court which made no award for damages and no order for costs following the appellant's application for assessment of damages based on an order dated 12 March 2018 obtained to remove the respondent's caveat which was wrongfully lodged on the respondent's lands. The appellant had sought to recover the total legal fees and disbursements of RM70,000 incurred by it and paid to its advocates and solicitors, as damages against the respondent. On appeal, the only issue was whether the appellant could recover the legal fees and disbursements of RM70,000 as damages by way of an indemnity under the assessment of damages proceeding arising from the removal of a private caveat.

Held, allowing the appeal with cost:

(1) In *Lo Foi v Lee Ah Hong @ Lee Lum Sow & Ors* [1997] MLJU 310, the learned HCJ held that damages under s 329(1) of the National Land Code (which is equivalent to s 179 of the Sarawak Land Code (Cap 81)) must be assessed with the principle in the law of torts and that would be the reasonable foreseeability test. Therefore, damages would be recoverable if they come within the range of damages in law and if they are not too remote (see para 20).

(2) The court was of the considered opinion that the costs of RM5,000 awarded by the High Court when the appellant's application for removal of caveat was allowed, was only in respect of the legal costs of that application and did not include the appellant's claim for legal fees and disbursements under this originating summons for assessment of damages (see para 26).

(3) It was trite law that a caveator was liable to pay damages that the claimant has sustained or suffered damage, as a result of the wrongful caveat being entered on the subject land. Section 179 of the Sarawak Land Code did not impose a legal straitjacket in which proof of actual loss as alleged by the respondent was the sole conclusive determinant of 'such compensation as may be just'. 'Such compensation as may be just' was not confined to real, actual and possibly direct damage as contended, as the wordings of s 179 was wide enough to cover the legal fees and disbursements incurred in removing the caveat lodged against the lands. Had the respondent not lodged the caveat against the lands, the appellant would not have had to expend legal expenses to protect and safeguard its legitimate interests in the lands. These are expenses which the appellant was constrained to incur if not for the respondent's entry of wrongful caveat against the lands (see paras 23 & 31–32).

(4) The court agreed with the principles laid down in *Lo Foi v Lee Ah Hong @ Lee Lum Sow & Ors* [1997] MLJU 310 and found that the appellant's sole claim for 'total legal fees and disbursements of RM70,000' came within the meaning of 'the tortious damage' and the 'foreseeability test' and that the claim for the legal fees was not too remote. The respondent ought to know that if he lodged a caveat against the land wrongfully, the appellant as the registered proprietor would be forced to take out legal action, to defend and protect his legitimate interests in the same and in doing so, would incur legal costs (see paras 29–30).

(5) It was the respondent's contention that there is no concrete evidence whether in writing or otherwise, in the form of an official valuation of the lands, any offer in writing to purchase the lands by outside parties or negotiation in writing by serious outsiders in respect of the lands to show actual loss in value in the lands actually sustained by the appellant to prove that they have sustained damage as a result of the wrongful entry of caveats. In so far as the respondent's submission that the appellant had adopted a totally wrong court procedure as a claim for legal costs was never envisaged as a compensatory head under s 179 of the Sarawak Land Code, for the reason given above, the court held that a claim for legal costs and disbursements involved in the application for the removal of caveats was within the scope of a compensatory head under s 179 (see paras 31 & 33).

(6) The learned justices were of the view that the appellant's payment of legal fees amounting to RM70,000 was 'actual damage' suffered by the appellant in that the appellant had to incur this sum to remove and protect his interests in the lands and this was legitimately one of the heads of damages which an aggrieved person such as the appellant herein may claim. Section 179 of the Sarawak Land Code and similarly s 329(1) of the National Land Code did not expressly or by necessary implication

preclude or prohibit the claim for legal fees and disbursement incurred, provided that there was evidence to prove that the damages or loss arose from the entry of caveat without reasonable cause (see para 35).

(7) In so far as the respondent's contention that the legal fees amounting to the sum of RM70,000 was exorbitant and unreasonable, the learned justices found that there was no rebuttal evidence adduced by the respondent, other than a mere challenge and denial (see para 36).

[Bahasa Malaysia summary

Ini adalah rayuan terhadap keputusan Mahkamah Tinggi yang tidak memberi awad untuk ganti rugi dan tiada perintah untuk kos berikutan permohonan perayu untuk taksiran ganti rugi berdasarkan perintah bertarikh 12 Mac 2018 yang diperoleh untuk membatalkan kaveat responden yang telah dimasukkan secara salah ke atas tanah-tanah responden. Perayu telah memohon untuk mendapatkan semula jumlah fi guaman dan pembayaran RM70,000 yang ditanggung olehnya dan yang telah dibayar kepada peguambela dan peguamcaranya, sebagai ganti rugi terhadap responden. Semasa rayuan, satu-satunya isu adalah sama ada perayu boleh mendapat semula yuran guaman dan pembayaran RM70,000 sebagai ganti rugi melalui indemniti di bawah prosiding taksiran ganti rugi yang berbangkit daripada pembatalan suatu kaveat persendirian.

Diputuskan, membenarkan rayuan dengan kos:

(1) Dalam kes *Lo Foi v Lee Ah Hong @ Lee Lum Sow & Ors* [1997] MLJU 310, hakim Mahkamah Tinggi yang bijaksana di bawah s 329(1) Kanun Tanah Negara (yang bersamaan dengan s 179 Kanun Tanah Sarawak (Bab 81)) perlu ditaksir menurut prinsip undang-undang tort dan iaitu ujian jangkaan yang munasabah. Oleh itu, ganti rugi boleh didapati semula sekiranya ia dalam julat ganti rugi dalam undang-undang dan sekiranya tidak terlalu terpencil (lihat perenggan 20).

(2) Mahkamah berpendapat bahawa kos RM5,000 yang diawadkan oleh Mahkamah Tinggi semasa permohonan perayu untuk membatalkan kaveat dibenarkan, adalah hanya berkaitan kos guaman permohonan tersebut dan tidak termasuk tuntutan perayu untuk fi guaman dan pembayaran di bawah saman pemula ini untuk taksiran ganti rugi (lihat perenggan 26).

(3) Ia adalah undang-undang mantap bahawa pengkaveat bertanggungjawab untuk membayar ganti rugi yang telah mengalami penuntut atau menanggung kerosakan, akibat kaveat yang telah dimasukkan secara salah ke atas tanah tersebut. Seksyen 179 Kanun Tanah Sarawak tidak mengenakan sekatan perundangan yang mana bukti kerugian sebenar sepertimana dikatakan oleh responden adalah satu-satunya penentu konklusif 'such compensation as may be just'.

'Such compensation as may be just' tidak terhad kepada kerosakan yang nyata, sebenar dan berkemungkinan secara langsung sepertimana yang dihujahkan, memandangkan perkataan dalam s 179 adalah cukup luas untuk merangkumi fi guaman dan pembayaran yang ditanggung semasa membatalkan kaveat yang dimasukkan ke atas tanah-tanah itu. Sekiranya responden tidak memasukkan kaveat ke atas tanah-tanah itu, perayu tidak perlu membelanjakan perbelanjaan guaman untuk melindungi kepentingan yang sah dalam tanah-tanah tersebut. Ini merupakan perbelanjaan yang terpaksa ditanggung oleh perayu jika tidak disebabkan oleh kemasukan kaveat yang salah oleh responden ke atas tanah-tanah tersebut (lihat perenggan 23 & 31–32).

(4) Mahkamah bersetuju dengan prinsip-prinsip yang dinyatakan dalam kes *Lo Foi v Lee Ah Hong @ Lee Lum Sow & Ors* [1997] MLJU 310 dan mendapati bahawa satu-satunya tuntutan perayu untuk 'total legal fees and disbursements of RM70,000' termasuk dalam maksud 'the tortious damage' dan 'foreseeability test' dan bahawa tuntutan untuk fi guaman tidak terlalu terpencil. Responden patut mengetahui bahawa jika dia memasukkan kaveat ke atas tanah secara salah, perayu sebagai pemilik berdaftar terpaksa mengambil tindakan undang-undang, untuk mempertahankan dan melindungi kepentingan sahnya dalam tanah-tanah itu dan dengan berbuat demikian, akan menanggung kos guaman (lihat perenggan 29–30).

(5) Ia adalah hujahan responden bahawa tiada keterangan yang kukuh sama ada secara bertulis atau sebaliknya, dalam bentuk penilaian rasmi untuk tanah-tanah itu, sebarang tawaran secara bertulis untuk membeli tanah-tanah itu oleh pihak luar atau rundingan secara bertulis oleh orang luar yang serius tentang tanah-tanah itu untuk menunjukkan kerugian dalam nilai sebenar tanah-tanah itu yang sebenarnya dialami oleh perayu bagi membuktikan bahawa ia mengalami kerosakan akibat kemasukan kaveat secara salah. Sejauhmana hujahan responden bahawa perayu telah menerimapakai prosedur mahkamah yang salah bagi tuntutan untuk kos guaman tidak pernah dijangkakan sebagai tajuk pampasan di bawah s 179 Kanun Tanah Sarawak, atas sebab yang diberikan di atas, mahkamah telah memutuskan bahawa suatu tuntutan untuk kos guaman dan pembayaran yang terlibat dalam permohonan untuk membatalkan kaveat adalah dalam skop tajuk pampasan di bawah s 179 (lihat perenggan 31 & 33).

(6) Hakim-hakim yang bijaksana berpandangan bahawa bayaran fi guaman perayu berjumlah RM70,000 ialah 'kerosakan sebenar' yang dialami oleh perayu yang mana perayu terpaksa menanggung jumlah ini untuk membatalkan dan melindungi kepentingannya dalam tanah-tanah itu dan ini merupakan salah satu tajuk ganti rugi yang sah di mana orang yang terkilan seperti perayu boleh membuat tuntutan. Seksyen 179

Kanun Tanah Sarawak dan juga s 329(1) Kanun Tanah Negara tidak menyatakan atau melalui implikasi yang perlu menghalang atau melarang tuntutan untuk fi guaman dan pembayaran yang ditanggung, dengan syarat terdapat keterangan yang membuktikan bahawa kerosakan atau kerugian itu berbangkit daripada kemasukan kaveat tanpa sebab yang munasabah (lihat perenggan 35).

(7) Setakat mana hujahan responden bahawa fi guaman berjumlah RM70,000 adalah terlalu tinggi dan tidak munasabah, hakim-hakim yang bijaksana telah mendapati bahawa tiada keterangan bantahan telah dikemukakan oleh responden, selain daripada cabaran sahaja dan penafian (lihat perenggan 36).]

Cases referred to

Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors [2005] 2 MLJ 1; [2004] 4 CLJ 309, FC (refd)
Lee Ing Chin @ Lee Teck Seng & Ors v Gan Yook Chin & Anor [2003] 2 MLJ 97; [2003] 2 CLJ 19, CA (refd)
Lo Foi v Lee Ah Hong @ Lee Lum Sow & Ors [1997] MLJU 310; [1998] 1 CLJ Supp 244, HC (folld)
Ming Holdings (M) Sdn Bhd v Tuan Syed Azahari bin Noh Shahabudin & Anor [2010] 4 MLJ 577; [2010] 6 CLJ 857, FC (refd)
Ting Sieh Chung v Hock Peng Realty Sdn Bhd [2013] 2 MLJ 90, CA (refd)

Legislation referred to

Land Code (Cap 81) s 179
National Land Code s 329, 329(1)

Appeal from: Originating Summons No MYY-24NCvC-73 of 10–2017 (High Court, Miri)

Rajesh Jethi (Jethi & Assoc) for the appellant.
David Siaw Ting Cheng (David Siaw & Co Advocates) for the respondent.

Lee Heng Cheong JCA:

INTRODUCTION

[1] This an appeal by the appellant/plaintiff against the learned High Court judge's ('the learned HCJ') decision which made no award for damages and no order for costs after the hearing of the appellant's application for assessment of damages based on wrongful entry of caveats against two pieces of land ('the lands') by the respondent/defendant.

[2] For ease of reference, parties will be referred to as they were in the proceedings before the High Court.

THE SALIENT FACTS

[3] Pursuant to the order of the High Court made on 12 March 2018, removing the defendant's caveat wrongfully lodged on the plaintiff's lands, the plaintiff filed this originating summons for assessment of damages against the defendant which was conducted by the learned HCJ on 23 August 2018.

[4] During the hearing of the plaintiff's assessment of damages, the plaintiff called only one witness namely Mr Goh Yong Meng (PW1) whereas the defendant elected not to call any witness.

[5] It is undisputed that through Mr Goh Yong Meng's (PW1) evidence, the plaintiff only sought to recover the total legal fees and disbursements of RM70,000 incurred by it and paid to its advocates and solicitors, Messrs Jethi & Associates, Miri as damages against the defendant.

FINDINGS OF THE HIGH COURT

[6] The learned HCJ dismissed the plaintiff's claim for legal fees and disbursements after the hearing of the assessment of damages on two main grounds namely:

(a) that the cost of RM5,000 was previously awarded to the plaintiff when the defendant's caveat was removed by the High Court on 12 March 2018. The assessment of damages was confined to the assessment of the plaintiff's loss and damages and not the claim for legal fees and disbursements incurred by the plaintiff; and

(b) that the plaintiff had not shown that it had sustained any damages due to wrongful caveat lodged by the defendant. There was no evidence to prove that the plaintiff had sustained any damages due to the loss in the value of the lands in question or any evidence of dealings or intention to deal with the lands which were the subject matter of the defendant's caveat earlier, as such the court made no award for damages and cost of the proceedings.

THE PLAINTIFF'S CONTENTIONS BEFORE THIS COURT

[7] The plaintiff contended that based on the unchallenged evidence of PW1, the total sum of RM70,000 has been actually incurred by the plaintiff and duly paid to its advocates, Messrs Jethi & Associates as the legal fees and disbursements for the removal of caveat and assessment of damage's

applications and that it is both reasonable and foreseeable to allow the plaintiff's claim for the full reimbursement of the sum of RM70,000 against the defendant.

[8] The sum of RM70,000 has actually been incurred by the plaintiff and it is only fair that the defendant be made to pay what is reasonably foreseeable. Further, the High Court had allowed the claim for legal fees and reimbursement on a solicitor-client basis.

[9] The plaintiff further contended that the sum of RM5,000 was ordered by the High Court when the plaintiff's application for removal of the defendant's caveat was allowed by the High Court on 12 March 2018. This sum must be treated differently from the sum of RM70,000 claimed by the plaintiff on a full indemnity basis because the sum of RM5,000 was awarded as cost following the plaintiff's successful application for removal of the defendant's caveat whereas the sum of RM70,000 is claimed on a solicitor-client basis.

THE DEFENDANT'S CONTENTIONS BEFORE THIS COURT

[10] The defendant contended that there is no evidence to prove that the plaintiff has sustained damage based on an acceptable calculation of loss in value in respect of the lands as a result of the wrongful entry of caveats. Furthermore, upon PW1 being cross-examined by the defendant's counsel, to show the evidence in his witness statement and/or the plaintiff's bundle of documents of actual loss of value or damage for the lands as a result of the wrongful caveats, PW1 was not able to show any evidence at all.

[11] Further the defendant submitted that the plaintiff was not able to adduce any concrete evidence whether in writing or otherwise, for example, an official valuation of the lands, any offer in writing to purchase the lands by outside parties or negotiation in writing by serious outsiders in respect of the lands, to show actual loss in value in the lands actually sustained by the plaintiff.

[12] The defendant also complained that the sum of RM50,000, being legal fees for a simple removal of caveat application is too exorbitant and unrealistic where there is no novelty or special skills involved and/or a complexity of laws to be researched. Furthermore, the High Court had already awarded costs of RM5,000 to be paid to the plaintiff for the removal of caveat application. Similarly the sum of RM20,000 allegedly paid for the present hearing on assessment of damages is too expensive and most unreasonable as again there is no specialised skills or novelty or complexity of laws involved and as the applicable laws and/or precedents are very straightforward to any claim for

damages for wrongful caveat. Furthermore, there was no cause papers exchanged between the opposing parties at all.

[13] The plaintiff has adopted a totally wrong court procedure as a claim for legal costs was never envisaged as a compensatory head under s 179 of the Sarawak Land Code.

THE LAW

[14] It is trite law that the specific finding of facts by the learned HCJ as a trier of facts should not be disturbed by an appellate court such as this court herein unless that finding was plainly wrong: see *Ming Holdings (M) Sdn Bhd v Tuan Syed Azahari bin Noh Shahabudin & Anor* [2010] 4 MLJ 577; [2010] 6 CLJ 857 (FC) paras 41–48;

[15] We were mindful of the limited role of the appellate court in relation to findings of facts made by the court of first instance. In the case of *Lee Ing Chin @ Lee Teck Seng & Ors v Gan Yook Chin & Anor* [2003] 2 MLJ 97; [2003] 2 CLJ 19 where the Court of Appeal held as follows:

> ... an appellate court will not, generally speaking, intervene unless the trial court is shown to be plainly wrong in arriving at its decision. *But appellate interference will take place in cases where there has been no or insufficient judicial appreciation of the evidence*. (Emphasis added.)

[16] Reference is also made to the decision of the Federal Court in *Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1; [2004] 4 CLJ 309 where the Federal Court held that the test of 'insufficient judicial appreciation of evidence' adopted by the Court of Appeal was in relation to the process of determining whether or not the trial court had arrived at its decision or findings correctly on the basis of the relevant law and the established evidence.

[17] Section 179 of the Sarawak Land Code (Cap 81) provides for the consequences of entering a caveat without reasonable cause. It merits reproduction as follows:

> 179 Person entering caveat without cause
>
> (1) *Any person lodging any caveat without reasonable cause shall be liable to make to any person who may have sustained damage thereby such compensation as may be just*.
>
> (2) Such compensation as is referred to in subsection (1) shall be recoverable in an action at law by the person who has sustained damage from the person who lodged the caveat. (Emphasis added.)

[18] Section 179 is substantially equipollent to s 329(1) of the National Land Code which reads:

> 329 Compensation for wrongful caveats
>
> (1) *Any person or body who, wrongfully or without reasonable cause*, *secures the entry of*, or fails to withdraw, *any private caveat shall be liable to pay compensation to any person or body who thereby suffers any damage or loss.* (Emphasis added.)

[19] The Court of Appeal in *Ting Sieh Chung v Hock Peng Realty Sdn Bhd* [2013] 2 MLJ 90 held as follows:

> It is settled law that 'actual damage' is actually one of the heads of damages which an aggrieved person such as the appellant in the present case could claim. *Section 179 of the Sarawak Land Code*, which is substantially equipollent to s 329 of the National Land Code, *does not expressly or by necessary implication preclude or prohibit the plaintiff from claiming for damages, loss of profits or sale at a lower price so long as there was evidence to prove the damages or loss, arising from the entry of the caveat without reasonable cause.* (Emphasis added.)

[20] In *Lo Foi v Lee Ah Hong @ Lee Lum Sow & Ors* [1997] MLJU 310; [1998] 1 CLJ Supp 244, Abdul Malik Ishak J (as he then was) held that damages under s 329(1) of the National Land Code must be assessed in accordance with the principle in the law of torts and that would be the reasonable foreseeability test. Thus, damages would be recoverable if they come within the range of damages recoverable in law, and if they are not too remote. On the facts of this case, the learned judge upheld the decision of the learned registrar in allowing the claim of RM2,000, which was the legal fees incurred to get the caveat removed.

FINDINGS OF THIS COURT

[21] Bearing in mind the above principles, we will now deal with the plaintiff's appeal.

[22] The sole issue to be determined in this appeal is whether the plaintiff can recover against the defendant, in full, the legal fees and disbursements of RM70,000 paid to its advocates and solicitors as damages by way of an indemnity under the assessment of damages proceeding arising from the removal of a private caveat.

[23] It is trite law that a caveator is liable to pay damages that the claimant has sustained or suffered damage, as a result of the wrongful caveat being entered on the subject land.

A EVIDENCE OF PW1

[24] The plaintiff through PW1, tendered the following evidence to support its claim for legal fees and disbursements of RM70,000 paid to its lawyers namely, Messrs Jethi & Associates:

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(a) the plaintiff's warrant to act and retainer dated 4 October 2017 (exh P2) showing the agreed legal fees of RM70,000 (namely RM50,000 for removal of caveat and RM20,000 for assessment of damages);

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(b) Messrs Jethi & Associates' Legal Bill No M01/10/2017 dated 4 October 2017 (exh P3) showing the sum of RM70,000 for the applications for removal of caveat and assessment of damages;

(c) PW1's Public Bank Bhd cheque No 657271 for the sum of RM15,000 (exh P4);

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(d) Messrs Jethi & Associates' official receipt issued to the plaintiff No 0147 dated 23 October 2017 for the sum of RM15,000 (exh P5);

(e) PW1's Public Bank Bhd cheque No 767875 for the sum of RM20,000 (exh P6);

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(f) Messrs Jethi & Associates' official receipt issued to the plaintiff No 0149 dated 10 January 2018 for the sum of RM20,000 (exh P7);

(g) PW1's Public Bank Bhd cheque No 666277 for the sum of RM15,000 (exh P8);

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(h) Messrs Jethi & Associates' official receipt issued to the plaintiff No 0150 dated 23 March 2018 for the sum of RM15,000 (exh P9);

(i) PW1's Public Bank Bhd cheque No 767890 for the sum of RM20,000 (exh P10); and

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(j) Messrs Jethi & Associates' official receipt issued to the plaintiff No 0201 dated 5 April 2018 for the sum of RM20,000 (exh P11).

[25] During PW1's cross-examination, it is noted that the defendant's counsel questioned him on two main issues relating to the plaintiff's claim for reimbursement of the full legal fees incurred by the plaintiff namely:

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(a) whether the costs of RM5,000 awarded by the High Court when the plaintiff's application for removal of caveat was allowed by the court on 12 March 2018, included all the plaintiff's claim for legal fees and disbursements under this action to which PW1 disagreed and answered 'No' (see p 10 of the notes of proceedings); and

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(b) whether he voluntarily paid the excessive legal fees of RM70,000 to the its advocates and solicitors to which PW1 agreed (see p 11 of the NOP).

[26] We are of the considered opinion that the costs of RM5,000 awarded by the High Court when the plaintiff's application for removal of caveat was allowed by the court on 12 March 2018, is only in respect of the legal costs of that application and does not include the plaintiff's claim for legal fees and disbursements under this originating summons for assessment of damages.

[27] The defendant sought to argue that the damages suffered by the plaintiff arising from the entry of the wrongful caveat must be real, actual and possibly direct damage and that the burden is on the plaintiff to prove that he has sustained such real, actual and possibly direct damage due to the said wrongful lodgement of caveat.

[28] In *Lo Foi v Lee Ah Hong & Ors* the court there also held 'damages under s 329(1) of the National Land Code must be assessed in accordance with the principles of the laws of torts and that would be the reasonable foreseeability test' and 'damages sought for would only be recoverable if they come within the range of damages recoverable in law and secondly, if they are not too remote'.

[29] We are in full agreement with the above principles laid down in *Lo Foi v Lee Ah Hong & Ors* and applying such principles to the instant appeal, we find that the plaintiff's sole claim for 'total legal fees and disbursements of RM70,000' comes within the meaning of 'the tortious damage' and the 'forseeability test' as defined by *Lo Foi v Lee Ah Hong & Ors* and that the claim for the legal fees is not too remote.

[30] The defendant ought to know that if he lodged a caveat against the lands wrongfully, the plaintiff as the registered proprietor would be forced to take out legal action, to defend and protect his legitimate interests in the same and in doing so, would incur legal costs.

[31] As regard the defendant's contention that there is no concrete evidence whether in writing or otherwise, in the form of an official valuation of the lands, any offer in writing to purchase the lands by outside parties or negotiation in writing by serious outsiders in respect of the lands, to show actual loss in value in the lands actually sustained by the plaintiff to prove that the plaintiff has sustained damage as a result of the wrongful entry of caveats, we are of the respectful opinion that s 179 of the Sarawak Land Code does not impose such a legal straightjacket in which proof of actual loss as alleged by the defendant was the sole conclusive determinant of 'such compensation as may be just' as is stipulated in s 179 of the Sarawak Land Code. 'Such compensation as may be just' is not confined to real, actual and possibly direct damage as contended, as the wordings of s 179 of the Sarawak Land Code is wide enough to cover the legal fees and disbursements incurred in removing the caveat lodged against the lands.

[32] Had the defendant not lodged the caveat against the lands, the plaintiff would not have to expend legal expenses to protect and safeguard its legitimate interests in the lands. These are expenses which the plaintiff was constrained to incur if not for the defendant's entry of wrongful caveats against the lands.

[33] In so far as the defendant's submission that the plaintiff has adopted a totally wrong court procedure as a claim for legal costs was never envisaged as a compensatory head under s 179 of the Sarawak Land Code, for the reason given above, we hold that a claim for legal costs and disbursements involved in the application for the removal of caveats is within the scope of a compensatory head under s 179 of the Sarawak Land Code.

[34] Having distilled the principles from the aforesaid authorities and in the light of the above evidence, we are of the respectful view that PW1's above evidence clearly shows that the total legal fees of RM70,000 was incurred by the plaintiff and which sum was duly paid by PW1 on the plaintiff's behalf to its advocates and solicitors. PW1's evidence on the amount of legal fees paid, was not disputed or challenged by the defendant during his cross examination.

[35] In any event, we are of the view that the plaintiff's payment of legal fees amounting to RM70,000, is 'actual damage' suffered by the plaintiff in that the plaintiff had to incur this sum to remove and protect his interests in the lands and this is legitimately one of the heads of damages which an aggrieved person such as the plaintiff herein may claim. Section 179 of the Sarawak Land Code (Cap 81) and similarly s 329(1) of the National Land Code do not expressly or by necessary implication preclude or prohibit the plaintiff from claiming for legal fees and disbursements incurred, removing a caveat other than for damages, loss of profits or sale at a lower price so long as there is evidence to prove that the damages or loss, arising from the entry of the caveat without reasonable cause, as in the instant appeal.

[36] In so far as the defendant's contention that the legal fees amounting to sum of RM70,000 is exorbitant and unreasonable, we find that there was no rebuttal evidence adduced by the defendant, other than a mere challenge and denial.

CONCLUSION

[37] Premised on the reasons enumerated above, we find that there are merits in the appeal. The appeal is hereby allowed with cost and the decision of the High Court dated 18 October 2018 is set aside.

Appeal allowed with costs; decision of the High Court set aside.

Reported by Michelle Yee